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10/798,541	03/11/2004	Michael J. Gray	8135	6481

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EXAMINER

MICHALSKI, SEAN M

ART UNIT	PAPER NUMBER
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3724

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07/09/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/798,541	Applicant(s) GRAY ET AL.	
	Examiner Sean M. Michalski	Art Unit 3724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 June 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2,3 and 5-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2,3,5-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claims 2, 3, and 5-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite.

The terms “a first end” (claim 2 line 7; claim 3 line 7), “said first end” (claim 2 line 8, claim 3 line 8, claim 5 lines 1 and 2, claim 6 lines 1 and 2, claim 13 lines 1 and 2) and “the first end” (claim 15 line 2) are indefinite. The pad is (from the figures) located *near* the terminus, but not actually on the terminus of the handle, whereas the cartridge housing does connect at the actual terminus. Likewise in claim 3, the two portions do not join at the first terminus, they join adjacent the first terminus as seen in the figures. This divergent meaning (terminus versus near-terminus) reflected in the claim is indefinite. Additionally, the definition applicant is attempting to use for the word end (‘near the terminus’ or ‘near the terminal point plane or line’ “near the termination”) is indefinite in and of itself, since one of ordinary skill in the art would not know whether a button lying at 5%, 10% or 20% constituted being “at a first end”. Using the plain meaning ‘near the terminus’ renders the claim indefinite since it fails to provide notice to one of ordinary skill in the art what would infringe the claim as so construed.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

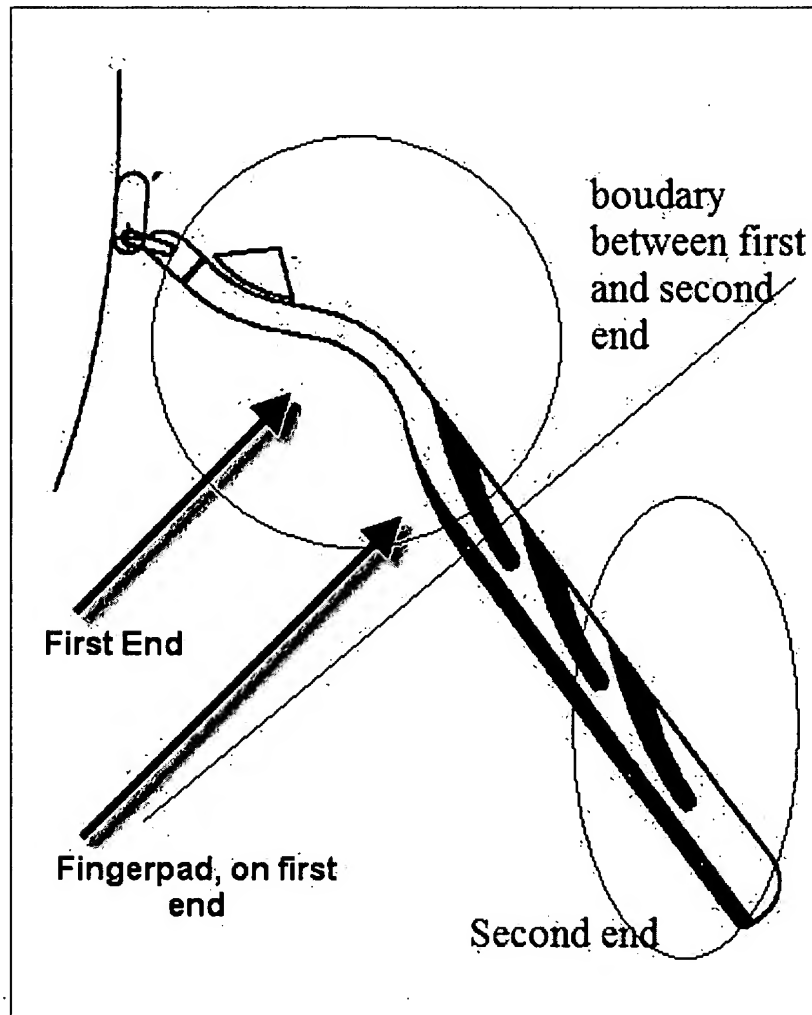
A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 2, 9/2, 12/2, 13/2 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Rozenkranc (USPN 6,276,061).

Regarding claim 2, Rosenkranc discloses a shaving razor (figure 2) with a housing (2 figure 1) having a primary guard (6, and the area thereby, figure1) a primary cap (5 figure 1) . Rosenkranc further discloses primary razor blades located between the cap and guard. Rosenkranc further discloses a trimming blade (4 figure 1) mounted at the back of the housing (as seen in figure 1) , and having it's cutting edge oriented away from said upper surface (seen in figure 1). Rosenkranc further discloses an elongate handle (1 figure 2) having a curve at the first end concave on the same side as primary blades (figure 2). Rosenkranc further discloses a finger pad at said first end , on the same side as said primary blades (see figure below). This interpretation is consistent with the broadest reasonable interpretation standard which must be applied to all claim language. **Additionally, in the alternative, in response to applicants contention that a 'pad' need not be elastomeric, Examiner would like to advance the following position: that the actual terminus of the handle Rozenkranc constitutes a 'pad' since 'finger pad' may mean *any surface that a finger rests upon*. A user may rest their finger on the handle of Rozenkranc up to and including the juncture where it is combined and joined with the cartridge connecting portion, and therefore the *very terminus* of the**

handle of Rozenkranc on the same side as the primary blades may rightly be construed as a 'finger pad'.



Regarding claim 9/2, Rozenkranc further discloses that there be three primary blades.

Regarding claim 12/2, Rozenkranc further discloses that the housing is pivotably connected to the handle by a connection that has an at rest stop position to prevent pivoting of

said housing when said trimming blade is cutting hair (column 1 lines 63-67, continuing to column 2 line 1).

Regarding claim 13/2 there is clearly a curve at said first end which is concave on the same side as the primary blades. See above.

Regarding claim 14, the finger pad of Rozenkranc is oval in shape. It appears to be oval in the figure. Alternatively, see the 103(a) rejection of claim 14 below.

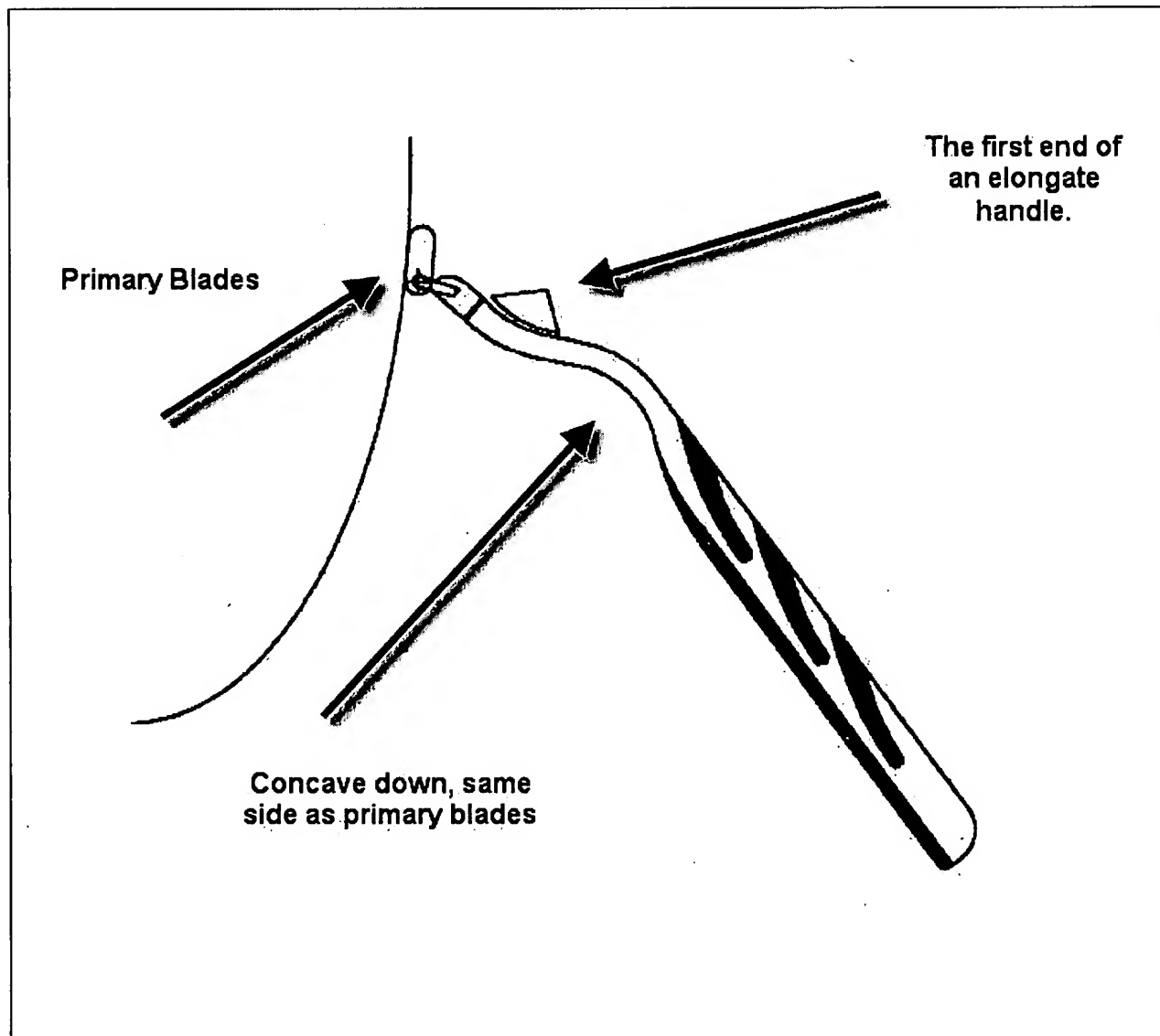
Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 3, 5, 6, 9/3, 12/3, 13/3 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rozenkranc in view of Gilder (USPN 5,533,263).

Regarding claim 3, Rozenkranc teaches a shaving razor (figure 2) with a housing (2 figure 1) having a primary guard (6, and the area thereby, figure1) a primary cap (5 figure 1) . Rosenkranc further teaches a primary razor blades located between the cap and guard. Rosenkranc further teaches a trimming blade (4 figure 1) mounted at the back of the housing (as seen in figure 1) , and having it's cutting edge oriented away from said upper surface (seen in figure 1). Rosenkranc further teaches an elongate handle (1 figure 2) having a curve at the first end concave on the same side as primary blades (figure 2, as reproduced for clarity below)



Rozenkranc does not teach a bifurcated handle at said first end.

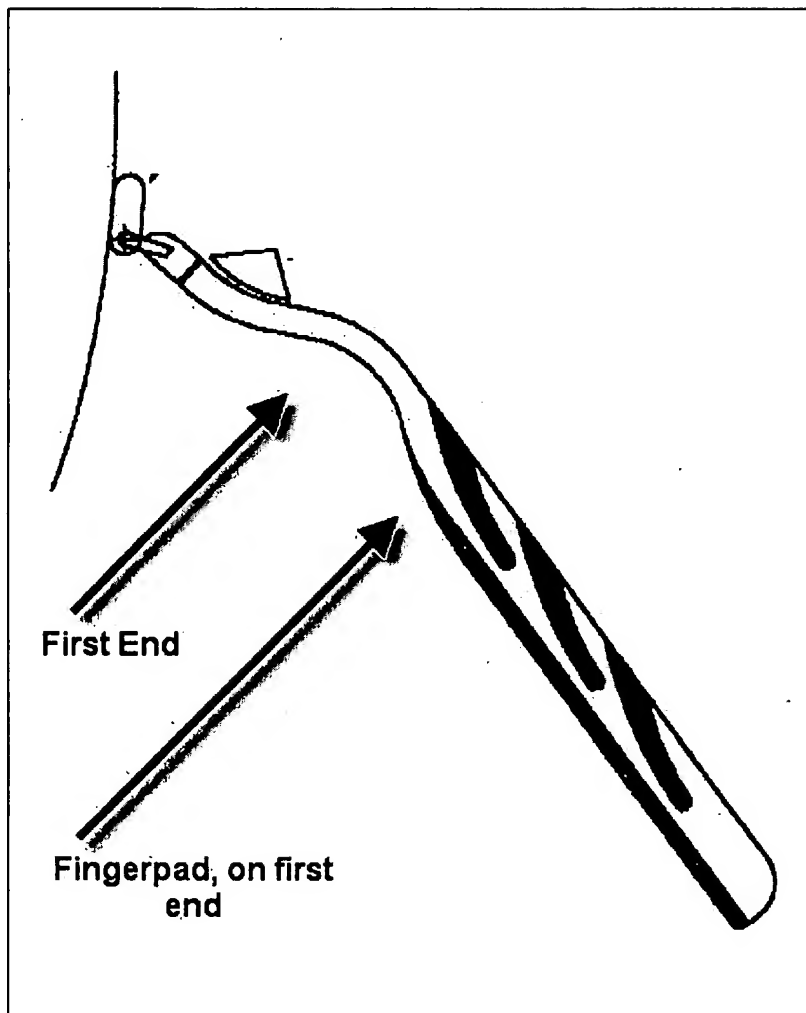
Gilder teaches a handle that is bifurcated such that there is a region between the two portions. **The first end of Gilder is the half of the handle seen to be closest to the blade cartridge (figure 5),** the bifurcation of Gilder is seen to be 'adjacent' the first end. The bifurcation is joined at (within) the first end (See figures 2 and 5). Furthermore, at the termination point of the first end, the bifurcation is joined. The 'region' is enclosed by the two portions. The two portions are joined "at the first end" via each element 22 figure 2. The portions

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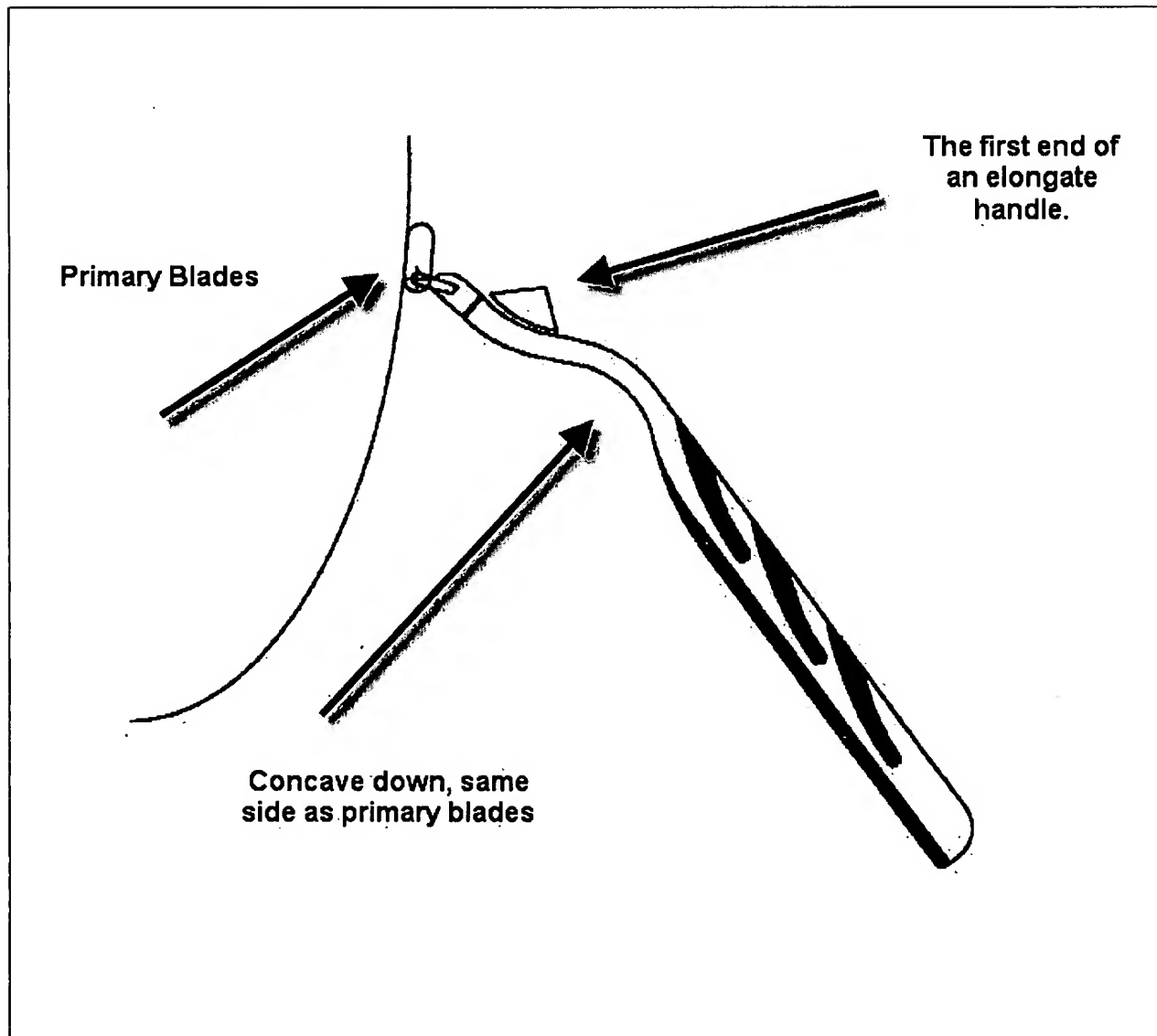
enclose a region regardless of the presence of a cartridge, as seen in figure 5, the two portions enclose a region (which means they set the boundary of a region). One viewing the two portions 26 alone would say that they enclose a region. This interpretation is consistent with the broadest reasonable interpretation standard.

In the same field of invention it would have been obvious to one skilled in the art at the time of the invention to modify Rozenkranc by making the handle bifurcated as taught by Gilder, so the user could better view the shaving operation, or to allow a configuration “so as not to obstruct flow of rinsing water through the blade unit” (column 1 lines 37-38). The motivation to combine is that a bifurcated handle is easier to rinse.

Regarding claim 5, Rosenkranc further teaches a finger pad at said first end , on the same side as said primary blades (see figure below).



Regarding claims 6, 13/3 and 15 Rozenkranc teaches a shaving razor (figure 2) with a housing (2 figure 1) having a primary guard (6, and the area thereby, figure1) a primary cap (5 figure 1) . Rosenkranc further teaches a primary razor blades located between the cap and guard. Rosenkranc further teaches a trimming blade (4 figure 1) mounted at the back of the housing (as seen in figure 1) , and having its cutting edge oriented away from said upper surface (seen in figure 1). Rosenkranc further teaches an elongate handle (1 figure 2) having a curve at the first end concave on the same side as primary blades (figure 2, as reproduced for clarity below).



Rozenkranc does not teach a bifurcated handle at said first end.

Gilder teaches a handle that is bifurcated such that there is a region between the two portions.

In the same field of invention it would have been obvious to one skilled in the art at the time of the invention to modify Rozenkranc by making the handle bifurcated as taught by Gilder, so the user could better view the shaving operation, or to allow a configuration "so as not to obstruct flow of rinsing water through the blade unit" (column 1 lines 37-38). Since in the

combination the bifurcation comes together opposite the cartridge at the first end of the handle it would be proximal to the finger pad. The motivation to combine is that a bifurcated handle is easier to rinse.

Regarding claim 9/3, Rozenkranc further teaches the use of three primary blades.

Regarding claim 12/3, Rozenkranc further teaches that the housing is pivotably connected to the handle by a connection that has an at rest stop position to prevent pivoting of said housing when said trimming blade is cutting hair (column 1 lines 63-67, continuing to column 2 line 1).

4. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rozenkranc (as applied to claim 2), or alternatively Rozenkranc in view of Gilder (as applied to claim 5).

Regarding claim 7, all the limitations of claims 2,4, or 5 have been met as discussed above, except Rozenkranc is silent as to whether or not said finger pad is made of “elastomeric material”.

Examiner previously took official notice that the use of elastomeric material is well known in the art for use as a finger pad, for grip comfort and control **which was not challenged by applicant**. Having not been challenged the official notice has come to be considered as an admission on the record. It would have been obvious to one skilled in the art at the time of the invention to make the finger pad from an elastomeric material to make the grip comfortable and easy to control.

5. Claims 8/2 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rozenkranc in view of Bosy et al. (USPN 6,598,303).

Regarding claim 8/2, Rozenkranc does not disclose the handle having ‘relieved surfaces’. Regarding claim 14, for the sake of argument, Rozenkranc may not disclose an oval finger pad.

Bosy et al. teaches an indent, or relieved portion, for providing access to finger gripping pad 24, figure 1 (column 2 lines 37-41 and column 3 lines 60-65). And a generally oval finger pad (24).

In the same field of invention it would have been obvious to one skilled in the art at the time of the invention to modify Rozenkranc by making the finger pad oval and indented as taught by Bosy et al, for added comfort. The motivation to combine is that having the finger pad be generally oval and indented (or have a relieved surface as seen in the figures) will be comfortable and allow access to the pad ("support multiple segments of an index finger").

6. Claims 8/5 and 8/6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rozenkranc in view of Gilder as applied to claims 5 and 6 above, and further in view of Bosy et al. (USPN 6,598,303).

Regarding claim 8/5, Rozenkranc in view of Gilder does not disclose the handle having 'relieved surfaces'.

Bosy et al. teaches an indent, or relieved portion, for providing access to finger gripping pad 24, figure 1 (column 2 lines 37-41 and column 3 lines 60-65).

In the same field of invention it would have been obvious to one skilled in the art at the time of the invention to modify Rozenkranc in view of Gilder by making the finger pad indented as taught by Bosy et al, for added comfort. The motivation to combine is that having the finger pad be indented (or have a relieved surface) will be comfortable and allow access to the pad ("support multiple segments of an index finger").

7. Claims 10/2, and 11/2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rozenkranc as applied to claims 1 or 2 above in view of "Platinum Mach 14".

Rozenkranc does not disclose 4 or 5 or more primary shaving blades.

"Platinum Mach 14" discloses a 14 bladed razor (see figure on page two) .

In the same field of invention it would have been obvious to one skilled in the art at the time of the invention to modify Rozenkranc by adding up to 14 primary blades as taught by "Platinum Mach 14". The motivation to use more blades, as stated in Coffin (USPGPUB 2003/0217469), is to "increase the shaving efficiency of the razor".

8. Claim 10/3 and 11/3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rozenkranc in view of Gilder as applied to claim 3 above, and further in view of "Platinum Mach 14".

Rozenkranc does not disclose 4 or 5 or more primary shaving blades.

"Platinum Mach 14" discloses a 14 bladed razor.

In the same field of invention it would have been obvious to one skilled in the art at the time of the invention to modify Rozenkranc by adding up to 14 primary blades as taught by "Platinum Mach 14". The motivation to use more blades, as stated in Coffin (USPGPUB 2003/0217469), is to "increase the shaving efficiency of the razor".

9. Claims 2, 3, 5-11 and 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Braginetz (US 3,934,338) in view of Shurtleff et al. (5,687,485) and Kohring et al. (US D446,884 S).

Braginetz teaches a razor having a housing (figure 1) having a primary guard (68 on the left of figure 3) a cap at an upper surface of said housing (10 figures 3 and 4) one or more primary blades therebetween (see figure 3; the blades to the left are the primary blades); a trimming blade (15 a on the right of figure 3) oriented away from the upper surface and an elongated handle having a first end secured to the housing (75 figure 5, or 76, 77 figure 3, or both).

Braginetz does not teach a finger pad at the first end.

Shurtleff and Kohring both teach a finger pad (30 figures 1 and 2 of Shurtleff, all figures of Kohring), which is clearly at a "first end" of the razor handle. Shurtleff discloses that 30 is a "finger rest" column 6 line 66. Shurtleff also discloses "women like to place a finger on upper surface 20 of the razor to bear down on shaving unit 34 while shaving". See also column 6 lines 22-28 describing the under curved portions (**the side that is on the same side as the primary shaving blades**) of the handle being alternative grips, stating "underside thumb support position 'D'" (see D figure 6). It should be clarified that a Thumb is a finger, and the designation "thumb support" is the same as "finger support". The Disclosure as a whole supports this position, since numerous hand positions are described, and it clear that hand positioning is a matter of user choice. A support which is comfortable for a thumb is also comfortable for an index finger and given the numerous angles a user is attempting to shave, the user will change the positioning of a finger to best render comfort and control. The handle is also described as "comfortable" (column 2 line 53) and "ergonomic" (column 2 line 50). Shurtleff and Kohring both show that the handle is concave down on the same side as the blades (primary blades) especially in figures 4 and 6 of Shurtleff and figure 3 of Kohring. Shurtleff additionally discloses that the handle is relieved to

allow access to the finger pad (column 6 lines 45 –50 discloses a finger channel which inherently is relieved proximal to the finger pad 30, figure 1). Shurtleff also clearly shows a bifurcation at a first end (all figures) enclosing a region therebetween (figure 8, at least). The region between the bifurcation is provided to provide access to the finger pad *at least* in the embodiment shown in figure 8 and described in column 7 lines 7-10. The finger pad of Shurtleff is seen to be “generally oval” as the term is best understood by Examiner- see figure 2.

In the same field of invention it would have been obvious to one skilled in the art at the time of the invention to modify Braginetz by using a handle having a bifurcated end with a finger pad at the first end, with relieved surfaces thereon, and a region enclosed by the bifurcation which provides access to the finger pad, the finger pad being positioned where the two portions join at the first end and the fingerpad being generally oval as taught by Shurtleff and Kohring. The motivation to combine is that the handle configuration as disclosed is comfortable and ergonomic.

Regarding claims 9-11, the recitation of additional blades is obvious, since it has been held that the mere duplication of the working parts of an invention to provide a magnified result is routine, common, not beyond the ordinary skill in the art, and capable of being accomplished by the skilled artisan. See St. Regis Paper Co. v. Bemis Co. Inc., 193 USPQ 8, 11 (7th Cir. 1977). Additionally, See DyStar Textilfarben GmbH & Co. Deutschland KG v. C.H. Patrick Co., 80 USPQ2d 1641 (Fed. Cir. 2006), which states that “the suggestion test is not a rigid categorical rule. The motivation **need not be found in the references sought to be combined**, but may be found in any number of sources, **including common knowledge**, the prior art as a whole, or **the nature of the problem itself**. *In re Dembiczak*, 175 F.3d 994, 999 [50 USPQ2d 1614] (Fed. Cir.

1999). As we explained in *Motorola, Inc. v. Interdigital Tech. Corp.*, 121 F.3d 1461, 1472 [43 USPQ2d 1481] (Fed. Cir. 1997), ‘there is no requirement that the prior art contain an express suggestion to combine known elements to achieve the claimed invention. Rather, the suggestion to combine may come from the prior art, as filtered through the knowledge of one skilled in the art.’ “ (emphasis added). The prior art as a whole renders obvious the addition of more blades, see for example the previously cited reference “Platinum Mach 14” which shows a 14 bladed razor. Additionally or In the alternative, the motivation to use more blades, as stated in Coffin (USPGPUB 2003/0217469), is to “increase the shaving efficiency of the razor”.

10. Claims 7 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Braginetz (US 3,934,338) in view of Shurtleff et al. (5,687,485) and Kohring et al. (US D446,884 S) as applied to claims 2, 3, 5-11 and 13-15 above, and further in view of Rozenkranc (6,276,061) and Apprille Jr. et al. (US 5,787,586).

Braginetz (US 3,934,338) in view of Shurtleff et al. (5,687,485) and Kohring et al. (US D446,884 S) as applied to claims 2, 3, 5-11 and 13-15 above does not teach a pivotal connection with a rest stop.

Rozenkranc teaches a pivotal connection with a rest stop. (column 4 lines 64-67; also compare figures 2, 3 and 3a).

Apprille teaches a pivotal connection (all figures) between the housing and handle, and teaches that this is advantageous, since “housing 16 will pivot... and generally follow the contours of the user’s face”. This is desirable since it makes shaving easier.

In the same field of invention it would have been obvious to one skilled in the art at the time of the invention to modify Braginetz (US 3,934,338) in view of Shurtleff et al. (5,687,485) and Kohring et al. (US D446,884 S) as applied to claims 2, 3, 5-11 and 13-15 above by adding a pivotal connection between the handle and cartridge as taught by Apprille and Rozenkranc and to also provide a stop. The motivation to combine is that allowing pivotability will increase the ease of shaving generally (as taught by Apprille), and still allow for control while using the trimming blade (as taught by Rozenkranc).

Also in the alternative to the above rejection of claim 7, if the material of the fingerpad of Shurtleff is not determined to be "elastomeric", elastomeric finger pad material is disclosed by Apprille et al. (element 40; column 3 line 45-50).

It would have been obvious to make the fingerpad out of elastomeric material as taught by Apprille since it is comfortable.

Response to Arguments

Applicant's arguments filed 6/05/2007 have been fully considered but they are not persuasive, except as noted. Please additionally refer to the previous actions "Response to Arguments" sections.

11. Examiner notes, that 'pad' is definite, and withdraws the rejection under 112 second, on that basis. Other 112 rejections remain, as seen above.

12. Regarding applicants contention regarding the question of what constitutes and 'end' and 'a first end' that "This definition is identical to the definition utilized by applicant" examiner disagrees. Applicant has stated that when the ball is resting on the "10 yard line", one team is "defending their end of the field". While this is true, the point made by examiner is that the term "end" equally applies when the ball rests on the 49 yard line, and the fact that there is not any delineation between where the ball is considered to be "at an end" and where it no longer is, renders the claim indefinite.

Examiner was quite clear on this point in the previous action, stating:

*"This divergent meaning (terminus versus near-terminus) reflected in the claim is indefinite. Additionally, the definition applicant is attempting to use for the word end ('near the terminus' or 'near the terminal point plane or line' "near the termination") is indefinite in and of itself, **since one of ordinary skill in the art would not know whether a button lying at 5%, 10% or 20% constituted being "at a first end"**. Using the plain meaning 'near the terminus' renders the claim indefinite since it fails to provide notice to one of ordinary skill in the art what would infringe the claim as so construed."*

Applicant has provided one example, and one "common" definition, stating "a football resting on the 10 yard line would be at one end of the field" and "a part or place at or adjacent to an extremity" however these definitions do not set forth the metes and bounds of the claim. **Where** is the boundary to "at or adjacent to". This is a broad claim, (which is acceptable) however when coupled with the severe vagueness of the terms "at or adjacent to" or the claim language itself "at a first end", the claim is rendered indefinite. The examiner must ask the question, how will the claims be construed to one of ordinary skill in the art? Since the answer is that there is not a *consistent* definition, that persons having ordinary skill in the art could believe that the claim covered a pad up to 50% of the length of the handle, and would definitely not agree whether the "end" ended at 5%, 10%, 15%, 20%, 25%, 33%, or some other value, then applicant has not

used language **necessary to establish what the metes and bounds of the claim are**, and the claims are therefore indefinite.

13. Again, applicant alleges that a ball placed on the 45 yard line does not constitute being "at the end". Examiner disagrees in two ways: First, it is "at a first end", as in 'on one half'; this is consistent with the field analogy: one **half** of the field is the **end** defended by one team or player. The standard of claim interpretation during prosecution is as follows: "claims in a pending application should be given their broadest reasonable interpretation" consistent with the specification and prior art. In re Pearson , 181 USPQ 641 (CCPA 1974). See additionally MPEP 904.01, and also In re Morris, 127 F.3d 1048, 44 USPQ2d 1023 (Fed. Cir. 1997). It has been established that during examination, where applicant has the ability to amend claims, the standard of claim interpretation is that the broadest reasonable interpretation be given to all the terms of a claim, *absent a specific definition provided in the **specification***, which would then control.

Secondly, the handle of Rozenkranc is a Gillette Mach 3 razor handle, and is not drawn to scale. I have personally measured a Gillette Mach 3 Handle, and the finger pad (as you, Gillette should know) starts much closer to the terminus having the primary blades than 45% as you continually allege. It is at the 20% mark that the finger-pad begins, which is unquestionably "at a first end" thereof. Your argument that the pad begins at the 45 yard line is misleading, and not in good faith.

Applicants arguments that claims which depend from claim 2 are also patentable for the same reasons (that Rozenkranc in view of Gilder fail to establish prima facie obviousness or alternatively, that Rozenkranc alone fails to anticipate) are **moot, without merit, and unpersuasive**, as seen above.

14. In regards to applicants contention that "it is the handle + cartridge that is forming the enclosed structure of gilder and not the handle alone as claimed" Examiner strenuously disagrees. Gilder clearly, unquestioningly provides "a region between said two bifurcations. The bifurcated handle, **without any razor cartridge**, clearly, unquestioningly joins **at the first end**, where the two bifurcations touch (as in: where they split apart coming from the handle; or where they join when entering the handle) this is "at the first end". **There is no requirement for a third side, for the region to be considered "enclosed" by the bifurcations.** There is an "enclosure" bounded between the bifurcations of the letter Y for example. Examiner reminds applicant that the standard of claim interpretation during prosecution is as follows: "claims in a pending application should be given their broadest reasonable interpretation" consistent with the specification and prior art. In re Pearson , 181 USPQ 641 (CCPA 1974). See additionally MPEP 904.01, and also In re Morris, 127 F.3d 1048, 44 USPQ2d 1023 (Fed. Cir. 1997). It has been established that during examination, where applicant has the ability to amend claims, the standard of claim interpretation is that the broadest reasonable interpretation be given to all the terms of a claim, *absent a specific definition*

provided in the specification, which would then control. **Applicants arguments that claims which depend from claim 3 are also patentable** for the same reasons (that Rozenkranc in view of Gilder fail to establish prima facie obviousness) are **moot, without merit, and unpersuasive.**

15. The argument that the application is distinguished from Braginetz, Shurtleff and Kohring is totally unpersuasive. Applicant alleges that Braginetz does not teach a razor with primary blades and a trimming blade: this is incorrect, since one may trim and the other may be primary. The terminology used in no way imparts any distinguishing patentable feature to the claims at bar. The term "primary" and "trimming" impart no limitations of a structural nature, and the functional restriction is one of terminology only, calling one set of blades a "primary" set and another a "trimming" set fully meets the limitations of the claims. This is consistent with the broadest reasonable interpretation standard, and fully meets the limitations of the claims at bar. Additionally, applicants own razor used the same exact style of blade to be both trimming and shaving blade. The fact that they are positioned differently is not claimed, nor would it matter, since "trimming" is not distinguished from "shaving" at any point, nor should it be, since the *exact same mode of cutting will sever the hairs, whether applicant considers them to be "trimmed" or otherwise.*

The statement that "there would be no need and thus no motivation whatsoever to pivot the double edged razor..." is inconsistent with well established law. Motivation may be rebutted by long felt but unmet needs, however Pivoting has a well known, long history, and is provided to razors in order to allow them to follow the contours of a users

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face, or other hirsute body part. Examiner found an explicit teaching in the art sought to be combined, providing not only a motivation, but an explicit motivation. As in the previous action, and above :

Aprille teaches a pivotal connection (all figures) between the housing and handle, and teaches that this is advantageous, since "housing 16 will pivot... and generally follow the contours of the user's face". This is desirable since it makes shaving easier.

Clearly, one of ordinary skill would have been motivated to effect such a modification, given the explicitly stated benefits of the secondary reference. It has been held that the combination of elements known in the prior art to be used in accordance with their known functions **is unpatentable as a matter of law** absent a showing that the combination has results which are *unexpectedly* advantageous over the prior art.

Please see *Sakraida v. Ag Pro, Inc.* U.S. Supreme Court No. 75-110, 425 US 273, 189 USPQ 449 (1976), Which states "**patent[s] for combination that only unites old elements with no change in their respective functions withdraws what is already known into field of its monopoly and diminishes resources available to skillful men**" and [a] patent [which] simply arranges old elements with each performing the same function it had been known to perform, although perhaps producing a more striking result than in previous combinations...are not patentable under standards appropriate for a combination patent"; also see *Anderson's Black Rock, Inc. v. Pavement Salvage Co., Inc.* U.S. Supreme Court 396 US 57, 163 USPQ 673 (1969) which states "while the combination of old elements performed a useful function, it added nothing to the nature and quality of the radiant-heat burner already patented".

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Similarly here, the addition of a pivot to the head of a razor, as shown by the art of record, and additional references too numerous to mention, in addition to the explicit suggestion or motivation to use a pivot to make a razor follow the contours of a users face, leaves no doubt that the prima facie combination is proper. To allow a patent on the basis of well known features that are clearly shown to be beneficial in the prior art of record is repugnant to the patent system, **and to allege that this is a patentable advance lacks good faith.**

The Supreme Court in *KSR International Co. v. Teleflex Inc. et al.* No. 04-1350, 550 U.S. ____ (2007) affirmed both Sakraida and Anderson's requirement that to be patentable a combination needed to provide some synergistic effect. See Slip op. at 13 lines 3-19. Using known elements for their known functions is *as a matter of law not patentable*, since it removes resources available to skillful men, contrary to U.S. Const., Art. I §8, cl.8. which provides patent monopolies to promote the progress of useful arts. See Slip op. *KSR* at 24 lines 5-7.

Each of the elements are known as seen in the cited prior art (above); their combination is unpatentable absent a showing that one of ordinary skill would be unable to effect their combination, or their combination provides unexpectedly good results (more than a duplicated effect).

Additionally, See DyStar Textilfarben GmbH & Co. Deutschland KG v. C.H. Patrick Co., 80 USPQ2d 1641 (Fed. Cir. 2006), which states that "the suggestion test is not a rigid categorical rule. The motivation **need not be found in the references sought to be combined**, but may be found in any number of sources, **including**

common knowledge, the prior art as a whole, or **the nature of the problem itself**. *In re Dembiczak*, 175 F.3d 994, 999 [50 USPQ2d 1614] (Fed. Cir. 1999). As we explained in *Motorola, Inc. v. Interdigital Tech. Corp.*, 121 F.3d 1461, 1472 [43 USPQ2d 1481] (Fed. Cir. 1997), 'there is no requirement that the prior art contain an express suggestion to combine known elements to achieve the claimed invention. Rather, the suggestion to combine may come from the prior art, as filtered through the knowledge of one skilled in the art.' " (emphasis added).

Conclusion

16. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sean M. Michalski whose telephone number is 571-272-6752. The examiner can normally be reached on M-F 7:30AM - 3:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer Ashley can be reached on 571-272-4502. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SMM



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